

1987

State of Utah v. Karen Marie Johnson : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 870222 CA
STATE OF UTAH,

Plaintiff-Respondent, : Case No. 870222-CA
v. :
KAREN MARIE JOHNSON, : Category No. 2
Defendant-Appellant. :

BRIEF OF RESPONDENT
- - - - -

APPEAL FROM A CONVICTION OF POSSESSION OF A
CONTROLLED SUBSTANCE, A CLASS A MISDEMEANOR,
IN THE THIRD JUDICIAL DISTRICT COURT, IN AND
FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE RAYMOND S. UNO, JUDGE, PRESIDING.

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 860222-CA
v. :
KAREN MARIE JOHNSON, : Category No. 2
Defendant-Appellant. :

BRIEF OF RESPONDENT

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 860222-CA
v. :
KAREN MARIE JOHNSON, : Category No. 2
Defendant-Appellant. :

BRIEF OF RESPONDENT
- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of possession of a controlled substance in violation of Utah Code Ann. § 58-37-8 (1953, as amended) after a trial in the Third District Court. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(e) (1983, as amended).

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether defendant was unreasonably detained in violation of her Fourth Amendment rights.
2. Whether this Court should interpret Article I, Section 14 of the Utah Constitution and Utah Code Ann. § 77-7-15 (1982) differently than the Federal Fourth Amendment.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Article I, Section 14 of the Constitution of the State of Utah (1896):

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized.

Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Utah Code Ann. § 77-7-15 (1982) provides:

A peace officer may stop any person in a public place when he has reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

STATEMENT OF THE CASE

This is an appeal from a judgment and conviction for possessing a controlled substance, a class B misdemeanor, in violation of Utah Code Ann. § 58-37-8 (1953, as amended). Defendant was convicted on April 1, 1987, after a bench trial in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Raymond S. Uno, Judge, presiding.

STATEMENT OF THE FACTS

On November 3, 1986, at approximately 3:00 p.m., Deputy Steve Stroud of the Salt Lake County Sheriff's Office observed a vehicle with a defective tail light at about 3200 South, 900 East (T. 5-6). Prior to stopping the vehicle, the Deputy ran a check on the license plates to determine the name of the registered owner (T. 6). Once stopped, he approached the driver, Sherry Johnson, and upon request, she produced a driver's license but stated there was no vehicle registration (T. 6). Upon discovering that the driver was not the registered owner and that

there was no registration in the vehicle, Deputy Stroud, suspecting that the vehicle may have been stolen, requested identification from defendant, the only passenger in the vehicle (T. 6-8. 13). Defendant responded that she did not have any identification, despite the fact that she had a Utah I.D. card in her purse (T. 7, 14). The Deputy then asked defendant for her name and date of birth to which she complied (T. 7).

According to the Deputy, he did not ask the defendant to remain in the vehicle, but rather, he simply said he would "be right back" and returned to his vehicle to run a check on the information and fill out a traffic citation (T. 7-8, 21). Police dispatch responded that the license of the driver was suspended and that defendant had several outstanding warrants (T. 8).

Upon completing the citation, the Deputy placed defendant under arrest for the outstanding warrants (T. 8-9). Incident to the arrest, the Deputy searched a bag in defendant's possession and discovered marijuana and various drug paraphernalia (T. 10-11, State's Exhibit 1).

Based upon the evidence seized, defendant was charged with Unlawful Possession of Controlled Substance, a Third Degree Felony, Unlawful Possession of Drug Paraphernalia, a Class B Misdemeanor and Possession of Burglary Tools, a Class B Misdemeanor (R. 7-8). Prior to trial, defendant moved to suppress the evidence seized at the time of the arrest claiming it was fruit of an unlawful seizure in violation of her State and Federal Constitutional rights (R. 14-15). After an evidentiary hearing and based upon the arguments and memorandum, the trial

court denied defendant's motion to suppress (R. 19). The trial court found that the deputy "had a legitimate reason to ask the passenger as to her identity to determine the identity of the driver, because the vehicle's registration was not present, and the owner was not known, and . . . the officer was exercising a legitimate concern in regards to the ownership of the vehicle and to whether the vehicle may have possibly either been stolen or being driven without possibly the owner's consent." (T. 47). While the court noted that the evidence was unclear whether or not there was a detention, it clearly found that the brief detention, if any, while investigating the traffic stop, was reasonable (T. 47-48).

After a bench trial, defendant was convicted of possession of a controlled substance, a class A misdemeanor, and upon the State's motion, the remaining charges were dismissed (R. 94). Defendant was sentenced to one year in the Utah State Prison, execution of the sentence was suspended, and defendant was placed on probation for one year (R. 98-99). Defendant now appeals.

SUMMARY OF ARGUMENT

Even assuming defendant was detained while the Deputy prepared the traffic citation, such a detention was investigatory and was based upon reasonable suspicion that the vehicle may have been stolen. Balancing the minimal intrusion on defendant's personal security against the legitimate and weighty public interests, the detention was reasonable applying Fourth Amendment standards. The Deputy's brief detention of defendant as a

passenger in a vehicle stopped for a minor traffic violation was permissible and reasonable considering safety and investigatory matters relating to the traffic stop.

Defendant failed to raise the Utah statutory argument in the trial court and, therefore, it should not be considered on appeal. Any distinctions between Utah Constitutional law and Federal search and seizure standards should be made by the Utah Supreme Court. To present, the Utah Supreme Court has not made any such distinctions.

ARGUMENT

POINT I

DEFENDANT WAS NOT UNREASONABLY DETAINED IN VIOLATION OF HER FOURTH AMENDMENT RIGHTS

On appeal, defendant asserts that the trial court erred in admitting evidence seized from her person incident to an arrest for outstanding warrants. She alleges that she was unconstitutionally and unreasonably detained as a passenger in a vehicle stopped for a minor traffic violation. Defendant's claim must fail.

The preliminary issue is whether defendant was detained. In its ruling on the suppression motion, the trial court noted that the evidence was in dispute whether or not the defendant was required to remain while the Deputy prepared the traffic citation (T. 47). The trial court did not make a clear finding whether or not there was a detention (T. 48). Instead, the court ruled that the Deputy could have properly detained defendant for a reasonable period of time while investigating the traffic stop (T. 48). Likewise, this Court need not determine

whether a detention occurred, because, even assuming that defendant's police encounter constituted a brief investigative detention, the detention was appropriate and reasonable under Fourth Amendment principles.

The appropriate standard for investigative detentions was articulated by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968); and Brown v. Texas, 443 U.S. 47, 51 (1979); and is codified in Utah as follows:

A peace officer may stop any person in a public place when he has reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

Utah Code Ann. § 77-7-15 (1982). See also United States v. Recalde, 761 F.2d 1448 (10th Cir. 1985); United States v. Merritt, 736 F.2d 223 (5th Cir. 1984); State v. Swanigan, 699 P.2d 718 (Utah 1985). The reasonable suspicion standards also applies to investigative stops involving vehicles. United States v. Sharpe, ___ U.S. ___, ___, 105 S. Ct. 1568, 1573 (1985).

Among the governmental interests protected by the reasonable suspicion test contained in § 77-7-15 are effective crime prevention and detection. Law enforcement officers must be able, "in appropriate circumstances, and in an appropriate manner [to] approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." United States v. Place, 462 U.S. 696, 704 (1983), quoting Terry, 392 U.S. at 22, in order to protect these governmental interests.

The undisputed facts in the present case are as follows: (1) that the Deputy made a valid traffic stop; (2) that the driver was not the registered owner of the vehicle; and (3) that there was no registration in the vehicle (T. 6). As the trial court noted, "the officer had a legitimate reason to ask the passenger as to her identity to determine the identity of the driver, because the vehicle's registration was not present, and the owner was not known, and I think the officer was exercising a legitimate concern in regards to the ownership of the vehicle and to whether the vehicle may have possibly been either stolen or being driven without possibly the owner's consent" (T. 47). Based upon the reasonable suspicion that the vehicle may have been stolen along with the need to further investigate the identity of the driver and her relationship to the vehicle owner, Deputy Stroud could have reasonably required defendant to remain seated in the stopped vehicle while he completed the investigation and issued the citation.

The United States Supreme Court in Delaware v. Prouse, 440 U.S. 648 (1979) set forth the constitutional standard to be applied in traffic stops where the occupants are detained. The Court explained that:

The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order "to safeguard the privacy and security of individuals against arbitrary invasions. . . ."
." Marshall v. Barlow's, Inc. 436 U.S. 307, 312 (1978), quoting Camara v. Municipal Court, 387 U.S. 523, 528 (1967). Thus, the permissibility of a particular law enforcement practice is judged by balancing

its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. . . .

Id. at 653-54 (citations omitted). This Court has similarly balanced the competing interests in detention cases. State v. Trujillo, 739 P.2d 85, 87 (Utah App. 1987). This Court noted as follows:

Thus, in considering the constitutionality of Trujillo's seizure, we must weigh the competing and often conflicting interests between the rights of individuals to be free from unnecessary harassment or arbitrary interference from law officers, and the interest of the public in being protected from crime. . . .

Id. (citations omitted.) Applying the balancing test to the instant case, one must conclude, as did the trial court, that the brief detention, if any, was reasonable and based upon legitimate governmental interests.

On one side of the scale, it is difficult to conceive a less intrusive detention. Here, the defendant was seated as passenger in the stopped vehicle (T. 7). According to the Deputy, defendant was not asked to exit nor remain in the vehicle (T. 21-22). Defendant was not detained any longer than it took to issue the traffic citation, no more than fifteen minutes (T. 8-9, 28). Realistically, it is unlikely that defendant wished anything other than to remain comfortably seated in the vehicle while the citation was being issued. Under the circumstances, the intrusion on defendant's personal security interests should be found de minimus.

On the other side, the Deputy's investigation of matters relating to the traffic stop promoted legitimate

governmental concerns regarding public safety and detection of criminal activity. Certainly, the Deputy's approach of simply asking defendant for identification and permitting her to remain seated in the vehicle was the least intrusive means of pursuing the governmental interest. The Deputy's conduct was neither random or arbitrary but was based on articulable facts creating reasonable suspicion.

Balancing the minimal intrusion on defendant's security interests against the legitimate public interest in highway safety and crime detection, the trial court did not err in finding that the detention of defendant was proper in pursuing the traffic stop and stolen vehicle investigation (T. 47-48).

A further basis justifying a minimal intrusion on the free movement of a vehicle passenger is the safety of the police officer. The United State Supreme Court in Pennsylvania v. Mimms, 434 U.S. 106 (1977) ruled that a police officer may order a driver out of a vehicle during a routine traffic stop. The Court balanced the driver's personal liberty against the safety of the police officer. Regarding the latter, the Court noted that "[a]ccording to one study, approximately 30 percent of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings--A Tactical Evaluation, 54 J. Crim. L. C. and P.S. 93 (1963).'Adams v. Williams, 407 U.S. 143, 148 n.3 (1972)."Mimms at 110. The Court further stated, "We think it too plain for argument that the State's proffered justification--the safety of the officer--is both legitimate and weighty." Id.

On the other side of the scale, the Court found the intrusion on the driver's liberty to be de minimus. The driver having already been detained by the initial traffic stop, the issue remaining is whether the driver should remain seated in the vehicle or along side it. Id. at 111. The Court concluded that "a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." Id.

Other courts have extended the Mimms ruling to allow a police officer to detain passengers in a routine traffic stop by ordering the passengers out of the vehicle. People v. Branch, 134 Misc.2d 705, 512 N.Y.S.2d 642 (Supp. 1987); People v. Livigni, 88 A.D.2d 386, 453 N.Y.S.2d 708 (1982), aff'd., 58 N.Y.2d 894, 460 N.Y.S.2d 530, 447 N.E.2d 78 (1983); People v. David L., 56 N.Y.2d 698, 451 N.Y.S.2d 722, 436 N.E.2d 1324 (1981), cert. denied 459 U.S. 866 (1982). In People v. McLaurin, 120 A.D.2d 270, 508 N.Y.S.2d 429 (1986), the New York Supreme Court, Appellate Division upheld a police officer's asking a passenger to step out of the car as constitutional. Id. In McLaurin, the police pulled over a car for speeding and asked the passenger and driver to get out of the car. The Officer noticed a bulge in the passenger's jacket, searched him, found a gun, and placed him under arrest. The officer never issued a speeding ticket. The defendant argued that the gun should be suppressed because the Officer had no reasonable suspicion of criminal activity or that he was in danger. Id. at 431.

Nevertheless, the McLaurin court ruled that the police officer acted properly, thus extending the Mimms ruling to a passenger of a car stopped for a traffic violation. Id. The

court noted as follows:

We fail to discern any appreciable difference between driver and passenger in the degree of risk posed to the safety of a police officer. Hence, police officers are not required, as defendant contends, to treat passengers differently from the driver, and we reject the argument that the circumstances which render it permissible to order a driver out of a car after a lawful stop for a traffic violation are not equally applicable to a passenger. Before a police officer orders a passenger out of a car, he is not required to have, separate and distinct from the underlying traffic violation which serves as the predicate for the stop, an articulable basis to support a suspicion either as to the existence of criminal activity by the passenger or that he poses a threat to the officer's safety.

Id. at 433.

Applying the rational in McLaurin to the present case, if a police officer making a routine traffic stop is permitted to detain any passengers by ordering them to exit the vehicle, it certainly follows that it is no more intrusive for a police officer to request that the passengers remain seated during the traffic stop.

Several legitimate governmental interests are promoted by allowing a police officer to request that a passenger remain seated during a routine traffic stop. First, the safety of the officer. Some experts suggest that it is safer for a police officer in a routine traffic stop to not allow the occupants to get out of the car. Pennsylvania v. Mimms, 434 U.S. 106, 119 n.10 (Stevens, J., dissenting). Second, to solicit the passengers aid in identifying the driver and owner of the vehicle and whether the driver has the owner's permission to operate the

vehicle. United States v. Harris, 528 F.2d 1327, 1330 (1975). Third, to question the passenger whether he or she is licensed to drive in the event that the driver is unable or unlicensed to drive the vehicle from the scene of the stop. State v. Davis, 452 So.2d 1208, 1212 (La.App. 5th Cir. 1984). Finally, where a routine traffic stop is escalated into something more based upon a reasonable suspicion that criminal activity is afoot, a police officer may detain the vehicle occupants for further investigation. Thus, balancing the legitimate governmental interests noted above against the minimal intrusion on defendant's personal security, the Deputy's brief investigative detention of defendant while preparing the traffic citation was reasonable given the circumstances.

Defendant cites United States v. Lockett, 484 F.2d 89 (1973) in support of her claim. However, the factual background in Lockett is clearly distinguishable from the case at hand. In Lockett, the police officer detained an individual to run a warrant check after the officer had completed a jay walking citation. Id. at 90. Since the officer had satisfied the purpose of the initial stop, the court found that no justification based upon reasonable suspicion existed to continue the detention longer than necessary to issue the citation. Id. at 91. In the instant case, defendant was detained only so long as necessary to issue the traffic citation to the driver of the vehicle in which defendant was a passenger (T. 8-9). Further, the detention was based upon reasonable suspicion that the vehicle in which the defendant was seated may have been stolen (T. 7-8).

POINT II

THIS COURT SHOULD NOT INTERPRET RELEVANT UTAH
STATUTORY OR CONSTITUTIONAL LAW DIFFERENTLY
THAT ITS FEDERAL COUNTERPART

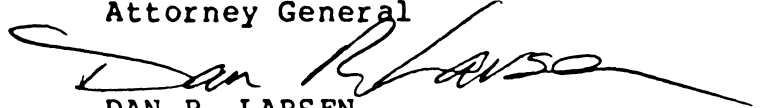
Defendant urges this Court to extend individual protections outlined in Utah Code Ann. § 77-7-15 (1982) and Article I, Section 14 of the Utah Constitution beyond Federal Fourth Amendment standards. First, the State statutory argument was not presented to the trial court, and therefore should not be considered for the first time on appeal. See State v. Carter, 707 P.2d 656, 660-61 (Utah 1985). Second, while this court has noted that Utah need not continue to accept the United States Supreme Court's constantly changing interpretation of federal search and seizure law in interpreting its own Constitution, such a change should come from the Utah Supreme Court. State v. Larocco, 742 P.2d 89, 103 (Utah App. 1987) (Billings, J., concurring in part and dissenting in part). Lastly, the Utah Supreme Court has most recently noted that it has never as yet drawn any distinctions between the protections afforded in Article I, Section 14 of the Utah Constitution and the Fourth Amendment. State v. Watts, 76 Utah Adv. Rep. 3, 4 (Feb. 17, 1988).

CONCLUSION

For the foregoing reasons, this Court should affirm defendant's conviction below.

DATED this 8th day of March, 1988.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Respondent were mailed, postage prepaid, to Debra K. Loy and Joan C. Watt, Salt Lake Legal Defender Assoc., 333 South Second East, Salt Lake City, Utah 84111, this 8th day of March, 1988.

